

# THE Pacific Commercial Advertiser.

A MORNING PAPER.

WALTER G. SMITH EDITOR  
WEDNESDAY : : : : JANUARY 9.

## BUSINESS, NOT POLITICS.

Sam Johnson has done the right thing in getting out of politics. He is employed to make roads and attend to the city's garbage and do both duties as economically and well as he knows how. While in politics he was more or less under the thumbs of the men who worked for him. He could not safely offend a lazy man by compelling him to do a fair day's labor for a fair day's pay, because, in that case, the man might not vote Sam's ticket. Now, being out of politics, he can compel efficiency with the alternative of dismissal.

All this will be good for the community and good for Mr. Johnson. It will help both; and the Republican party will gain more from the record of wise administration of public works than it possibly could from the enforced alignment, on its side, of a lot of road men and garbage carriers at the primaries or the polls.

With the road department out of politics on the one hand and the police department on the other, and both intent on doing the best that is in them, Honolulu ought to have a sort of civic millennium. This situation every good man should do his best to perpetuate. What this place most needs and wants is not politicians and party machines, but honest workers and clean business methods in office. The tense discipline of parties that have presidents, governors and United States senators to help elect is not needed in this little Territorial community where our political interests are all local, where we all know each other and can pick out the best men for offices. We can work out average good government here without all the formalities of organizing and drilling and log-rolling that pertain to States where the change of a single vote may decide the fate of the nation. Bosses can be entirely cut out without harm to any legitimate interest we have. This paper knows of no more hopeful sign than that one of the two powerful Republican dictators has been shorn of his strength at the polls and that the other has voluntarily relinquished politics.

## ROOSEVELT AND DE BOLT ANTICIPATED.

It may or may not be that Judge De Bolt obtained his inspiration for the bold words he held regarding the overruling of trial courts by the Supreme Court on mere technicalities, in his decision refusing a new trial to the second degree murderer Takamoto, from the recommendation of President Roosevelt on the same subject in his message to the present Congress. There is certainly a strong similarity between the expressions in the two deliverances in question. Whether the ideas are original with Judge De Bolt or otherwise, his expression of them is not here to be attacked.

The object of bringing forward the subject now is merely to show that the Supreme Court of the Territory of Hawaii anticipated even the recommendation of President Roosevelt on the subject and, further, that it has not adopted the course mentioned by Judge De Bolt. It is not necessary to repeat the latter's observations quoted only yesterday in this paper. What the President said is reproduced below. After recommending at considerable length the passage of a bill actually to be introduced at this session, giving the Government the right of appeal in criminal cases, but only upon points of law, the President proceeded to say:

"In connection with this matter I would like to call attention to the very unsatisfactory state of our criminal law, resulting in large part from the habit of setting aside the judgments of inferior courts on technicalities absolutely unconnected with the merits of the case, and where there is no attempt to show that there has been any failure of substantial justice. It would be well to enact a law providing something to the effect that:

"No judgment shall be set aside or new trial granted in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure unless, in the opinion of the court to which the application is made, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice."

Now it happens that the Supreme Court of Hawaii forestalled the President in these sentiments, in solemn exposition of the law of a case, by nearly a year and Judge De Bolt's utterances on the subject by precisely one year. This was in the opinion of the court, by Mr. Justice Hartwell, in *Kapiolani Estate v. Thurston*, as will clearly appear from the following abstract of a portion of that deliverance. Actually, indeed, the anticipation stated is years old, as shown by the court's citations from its own previous decisions. In the case here quoted, decided in the first week of January last year, the court discusses a question of the admissibility of certain evidence, concluding: "No logical reasoning, no theory of hearsay or res gesta makes this action of the court a probative fact for the jury to consider. Its admission as evidence, against the action of the defendant, and the refusal of his request to take it from the jury was erroneous." From this point the opinion of the court runs in part as follows:

"But we do not think that on this ground alone a new trial ought to be granted. The tendency of American decisions is to enlarge the scope in civil cases of the doctrine of harmless error in admitting evidence. Wrongful exclusion of evidence is far more likely to harm than is wrongful admission. An appellate court ought not to be so ready to order a new trial upon conjecture that the jury may have based its verdict wholly or in part upon the irrelevant testimony as in cases in which a party was not allowed to make out his case. The modern jury is apt to draw its own inferences from evidence before it rather than to adopt the conclusions of an ecclesiastical tribunal. The case has had two trials with the same result, although the exclusion was not shown at the former trial. The judge who tried the case had time after the verdict to reconsider his ruling and in denying a new trial probably thought that the verdict was right. A trial judge properly refuses a new trial for admission of irrelevant testimony if he thinks that upon the other evidence the verdict was right and probably not influenced by the objectionable testimony, as in granting a new trial he is apt to regard the verdict as wrong.

"By the early English rule erroneous admission or exclusion of evidence did not authorize setting aside the verdict 'unless upon all the evidence it appeared to the judges that the truth had thereby not been reached.' 1 Wigmore, Evidence, Sec. 21. But about the year 1835 English courts began setting aside verdicts for admission of irrelevant testimony unless the same fact was otherwise proved. This continued until the Judicature Act of 1873, which restored the original rule, enacting that a new trial should 'not be granted for improper admission or rejection of evidence unless in the opinion of the court some substantial wrong had been thereby occasioned on the trial.'

"THIS COURT IN SEVERAL CASES HAS DECLINED TO ORDER A NEW TRIAL FOR ERRORS WHICH APPEARED TO IT TO BE HARMLESS. Thus in *Merricourt v. Norwalk Fire Ins. Co.*, 13 Haw. 221. 'Although we do find that the trial judge was clearly in error in some of the rulings on the admission and exclusion of evidence complained of, still we do not consider these errors of sufficient gravity to justify us in setting aside the unanimous verdict of the jury and remanding the cause for a new trial.' So in *Gay v. Farley*, 16 Id. 79, in respect of certain evidence of doubtful relevancy, 'the error was harmless, for not only was there ample other uncontradicted evidence to require the findings as to the fact and the amount of the shortage, but some of that evidence consisted of admissions, as to both the fact and the amount of the shortage, made by Wright before his resignation and in connection with his official duties, so that the admissions objected to were at most merely cumulative.' Upon an erroneous exclusion of evidence in *Territory v. Wright*, Id. 144, 'We cannot, however, say that its exclusion was prejudicial to the defendant or was reversible error, the defendant having substantially admitted the receipt of the money.' In *Wong Hoon Kan v. Lui Yan*, Id. 736, upon the same subject, 'If it was error to allow this question, the error was harmless, for the issuance of the warrant and the arrest of the plaintiff on defendant's complaint were fully shown otherwise.'

"As a general rule we think that new trials ought not to be granted for errors in rulings upon evidence when there is no reason to believe that they affected the verdict."

It is an interesting fact that "Mother" Parker of Honolulu is just five days older than Mrs. Featherston Osler of Toronto, Canada, who celebrated her one hundredth birthday on December 14. Mrs. Osler is the mother of Dr.

William Osler of Oxford University, whose humorous reference to another's advocacy of the chloroforming of old folks added to the gaiety of nations and his own share of life's griefs. Another of Mrs. Osler's living sons is a member of the Dominion Parliament and one now dead was a noted criminal lawyer.

It is to be hoped that the United States will send a suitable squadron here to greet and receive the visiting Japanese, and fitly pay the obligations of courtesy.—Star.

This is the intelligent view of the case and it is not unlikely that the Government has already chosen to be represented here by something better than a tug when the Japanese visitors come. An official request or one from public bodies here might make the thing certain. On the Coast, for years past, the North Pacific fleet has been almost at the beck and call of commercial bodies, which get it to attend even their local seaport celebrations and fetes. Honolulu has sometimes overlooked this opportunity to its cost, although, as a port on the regular cruising route of the squadron, it has the right to ask.

Mayor Schmitz does not want to be tried. Probably Abe Ruef feels the same way. So did Tweed, an Eastern predecessor of theirs. These courts and juries are most annoying to politicians who are busy grafting plum trees.

A Tokio society has been formed to promote Japanese interests in the Philippines. It would be interesting to know how many branches it has among the Pulajanes.

Why should Hawaii import sugar sacks by the million that might be made here from material grown on the soil?

## SATURN THE EARLY EVENING STAR

Honolulu, T. H., Jan. 2, 1906.

Editor Advertiser: To settle a dispute, will you kindly elucidate the following point? There is a star of apparently 1 1-2 magnitude, visible in the early evening high up towards the S. or SW., I think in or near Aquarius, and the apex of Capricorn points towards it. A says it is Fornalhaut; B says it is a planet and that Fornalhaut is nearly 20 degrees further south. Now is there any planet visible in that region at the present time? Your answer will greatly oblige

A SUBSCRIBER.

Professor McNeil, teacher of physics at Oahu College, reports having scanned the heavens Thursday night at 7:45 and located Saturn apparently in, or near, Aquarius. Fornalhaut was located about 15 degrees farther south and nearer the horizon. He has no doubt that the bright star referred to is the planet Saturn.

This report was later verified by Professor Alexander, who says there is no occasion to go further for information, as Professor McNeil is a careful man. Saturn is the planet next beyond Jupiter. Its distance from the sun is about 886,000,000 miles. Its period 29 1-2 years, its diameter 75,000 miles at the equator and 68,000 at the poles, its time of rotation about 10 hours and 14 minutes is chiefly remarkable for its eight satellites and its rings, two flat luminous bands in the plane of its equator, now generally believed to be streams of small bodies revolving about the planet. In astrology it was regarded as a melancholy planet.

## COMMERCIAL CLUB

(Continued from Page One.) for it. Then the Lydecker motion to reconsider was put by the chair and seconded by Mr. von Holt. When the vote was taken Mr. Morgan and the second were the only persons voting in the negative. This having carried, a motion by Mr. Reidford to make a lease for the McCandless building was put and carried. Messrs. von Holt and Morgan voting against.

## CROUP.

A reliable medicine and one that should always be kept in the home for immediate use is Chamberlain's Cough Remedy. It will prevent the attack if given as soon as the child becomes hoarse, or even after the croupy cough appears. There is no danger in giving it to children, for it contains no opium or other harmful drug. For sale by Benson, Smith & Co., Ltd., agents for Hawaii.

## NOTICE TO THE PUBLIC.

The undersigned will not be responsible for any debts contracted in his name without his written consent.  
7619 WM. L. WELSH.

## Next Monday,

January 14th

OUR

## Clearance Sale

OF

## READY-TO-WEAR APPAREL

WILL BEGIN.

We will sell at greatly reduced prices remnants of OUR FALL STOCKS of Woolen Suits, Skirts, Coats and Jackets, Lawn Shirt-waist Suits, Linen Suits, Cravenette Coats and Women's and Children's Mackintoshes, and Boys' Tamoshaners.

See our Window Displays.

## EHLERS

WHOSE SALES ARE SALES.

## Commence

the year right by buying a

## New Hair Brush

A new lot just opened up, and will be sold at the

RIGHT PRICES.

Take a Look at Them!

**HOLLISTER DRUG CO.**  
ESTABLISHED 1879

## DAINTY

## Coalport Coffee Cups

Many New Ones Have Been Received in New Designs

From \$2.50 Upwards.

H. F. WICHMAN & Co.

Limited,

LEADING JEWELERS.

## Jangled Nerves

Nerves must chime in unison, since many organs of the body stand in important functional connection with the nervous system.

Frequent functional or organic disturbances follow derangement of these nervous paths between brain and body.

Paine's Celery Compound, for more than 19 years the standard nerve tonic is sanctioned by specialists.

Read the formula and the statements of the medical authorities and you will understand just how and just why it is.

Paine's Celery Compound contains no alcohol, no cocaine, no opium, no harmful drugs of any nature. It has stood the test of generations.

*Sunday* 25c per month  
*Advertiser*

## LONG WINTER EVENINGS

ARE AGAIN AT HAND

It is the season for reading in the home. Then your light is important. It must be clear and steady for comfortable reading.

## ELECTRIC LIGHT

is congenial to the eyesight. It is nearest to daylight—evenly diffused in a given area. From the standpoint of cost it is decidedly economical—all things considered.

## HAWAIIAN ELECTRIC COMPANY, LIMITED.

PHONE MAIN 390.

## SHAPE

Shoe style is mostly shape;—and it must be shape that stays.

## Our Malta Oxford

is not only shaped on a correct model but every pair is so thoroughly well made that it keeps its original graceful lines until completely worn out. Many shoes costing considerably more money haven't the faultless fit, exquisite lines and real distinction of the Malta.

PRICE \$5.00

## Manufacturers' Shoe Co., Ltd.

1051 FORT STREET : : : PHONE MAIN 282.



## TABLE DAINTIES

You may have what you like for the table in the way of delicatessen if you deal with us. We make our own bologna sausages, have a well assorted stock of salt and smoked fish and a complete line of American and imported cheese. Our sausage is made on the premises every day.

THE

## Metropolitan Meat Co., Ltd.

KEEP YOUR EYE ON

## Highland Park

## The New Subdivision

Adjoining beautiful College Hills on the Diamond Head side.

## Lots 70x200 feet

Will be sold for from

\$500 to \$800 each.

Terms: 1-4 Cash, 1-4 in 8 Months, 1-4 in 16 Months and 1-4 in 2 Years at 6 per cent interest.

Road are now in course of construction. Water pipes are now being laid. Superb Marine and Valley views.

Only one short block from the Manoa Valley Cars.

Further information will be given by

## Chas. S. Desky

Telephone Main 480. : : : Campbell Block